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14 *Attorneys for Defendants*

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

17 GREGG BERKELEY et al.,

18 *Plaintiffs,*

19 v.

20 INTEL CORPORATION et al.,

21 *Defendants.*  
22  
23  
24

**Civil Action No. 5:23-cv-00343-EJD**

**DEFENDANTS' MOVING SEPARATE  
STATEMENT IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

Hearing Date: December 11, 2025  
Time: 9:00 a.m.  
Courtroom: 4  
Judge: Hon. Edward J. Davila

Pursuant to Section V.B.1 of the Court's Standing Order for Civil Cases, Defendants Intel Corporation and Administrative Committee of the Intel Minimum Pension Plan respectfully submit the following Moving Separate Statement in support of Defendants' Motion for Summary Judgment:

	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Party's Response/Supporting Evidence
<b>Claims I AND II:</b> <ul style="list-style-type: none"> <li><b>Claim I: Violation of the Joint and Survivor Annuity Requirement of ERISA, 29 U.S.C. § 1055(d)</b></li> <li><b>Claim II: Violation of the Anti-Forfeiture Requirements of ERISA, 29 U.S.C. § 1053(a)</b></li> </ul>		
<i>ERISA does not require "reasonable" actuarial assumptions for JSA conversions.</i>	Plaintiff does not allege that any MPP participant has not received his or her contractually-defined benefits.  Compl., <i>passim</i> .	
	Plaintiff has expressly acknowledged that certain ERISA conversions need not be based on updated, "reasonable" assumptions.  Ex. 6 at 7, 15.	
	Plaintiff's position is that any JSA paid in an amount any lower than a JSA generated using the § 417(e) assumptions is unreasonable and unlawful.  Compl. ¶¶ 14, 35 90; ECF 86 at 10; Ex. 5 at 82, 206.	
	The original MPP terms in 1988 set the GAM-83 mortality table and the PBGC Rate as the assumptions to determine actuarial equivalence in all plan contexts.  Ex. 3 § 2.02; Ex. 2 ¶¶ 58-60.	
	When Congress specified	

1		minimum assumptions for specified contexts, such as the conversion of SLAs to lump sum benefits, the MPP's definition of actuarial equivalence was amended to account for those carve-outs. There have been no statutory or regulatory changes related to the assumptions used in conversions to JSAs.	
2		Ex. 4 ¶ 27; Ex. 1 § 2(a).	
3		In 2014, the IRS issued a Private Letter Ruling to Intel approving Intel's proposed plan changes, based on correspondence from Intel that specifically flagged the MPP's use of GAM-83 and the PBGC Rate.	
4		Ex. 7 at 7 n.9; Ex. 8.	
5	<i>Even if the Court finds a "reasonableness" requirement, it should narrow the issues in dispute.</i>	Between 1995 and 2000, the IRS based the § 417(e) interest rate on PBGC rates.	
6		Ex. 4 ¶ 52 & n.34.	
7		The PBGC rate changes based on economic and market conditions.	
8		Ex. 4 ¶ 50.	
9		The GAM-83 mortality table is a "standard table" approved by the IRS for actuarial equivalence determinations in nondiscrimination testing.	
10		Ex. 2 ¶¶ 130-31.	
11		Plaintiff's expert testified that whether "benefits are equivalent in value depends on the actuarial assumptions used to calculate the value of an	

1	annuity.”	
2	Ex. 10 at 12.	
3	Plaintiff’s expert testified that	
4	the GAM-71 table was	
5	constructed with “a significant	
6	margin to account for the future	
7	mortality improvements,” and	
8	that the GAM-83 mortality	
9	table has an even larger built-in	
10	margin for life expectancy	
11	improvement than the GAM-71	
12	table.	
13	Ex. 10 at 17.	
14	Plaintiff’s expert testified that	
15	“just because a table references	
16	1971 mortality as its basis does	
17	not mean that it is 38 years out	
18	of date.”	
19	Ex. 10 at 14.	
20	Plaintiff’s expert testified that	
21	as of 2009, the GAM-71 table	
22	was a “reasonable actuarial	
23	assumption” that the plan	
24	“use[d] for a variety of	
25	purposes” including calculating	
26	JSAs and that the various	
27	benefit forms “provided by the	
28	Plan are the actuarial equivalent	
	of each other.”	
	Ex. 10 at 12-14.	
<b>Claim III: Breach of Fiduciary Duty</b>		
	Plaintiff does not allege that	
	any plan term was misapplied	
	by any fiduciary.	
	Compl., <i>passim</i> .	

I attest that the evidence cited herein fairly and accurately supports or disputes the facts as asserted.

Respectfully submitted,

Dated: September 12, 2025

By: /s/ David S. Kurtzer-Ellenbogen

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